

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

6 1006

FILE: B-183928

DATE: June 17, 1976

MATTER OF: R &amp; R Services, Inc.

98420

**DIGEST:**

1. Procuring activity's cancellation of invitation calling for award by either individual or combination lot(s) was proper when low bid was unbalanced. Low bidder's unbalanced bid on individual lot together with unrealistic Government estimates on combination lot prevented competition and allowed for manipulation.
2. Where invitation was canceled as a result of unbalanced bidding by low bidder rather than because of arbitrary or capricious action by procuring activity low bidder's request for bid preparation costs is denied.

R & R Services, Inc. (R & R) protests the cancellation of invitation for bids (IFB) N00600-75-B-0109 issued by the Naval Regional Procurement Office (NRPO), Washington Navy Yard, for inventory, validation and supply overhaul assistance services to be performed for the active and inactive fleet and shore station customers. The IFB was canceled pursuant to section 2-404.1 (b) (viii) of the Armed Services Procurement Regulation (ASPR) (1975 ed.) based on the determination that "award under the IFB as structured would result in award at other than the lowest price".

The IFB solicited bids for Lots One through Six, each lot denoting a geographical area and composed of various line items of different types of services for which prices were requested. (It should be noted, however, that Lots One and Four consisted of line items marked "NOT APPLICABLE" for which prices were not requested although prices for the same items were requested in Lots Two and Five respectively). The six lots were as follows:

- Lot 1(4) - Active Fleet Ships, Atlantic (Pacific)
- 2(5) - All Navy Activities, Eastern (Western) United States, except Atlantic (Pacific) Active Fleet Ships
- 3(6) - All Navy Activities, Eastern (Western) United States - Active, Inactive Ships, Shore Activities and others

Award by lot was contemplated based on the following evaluation criteria set forth in section D of the solicitation:

"The quantities set forth are for the purpose of bid evaluation and are used to establish a maximum contract dollar amount by lot. The following procedures will be used for the purpose of bid evaluation:

"STEP 1: Select the low bids for a) Lot One  
 b) Lot Two  
 c) Lot Three

"STEP 2: From the low bid for Lot Two, select the price bid for each line item marked "NOT APPLICABLE" in Lot One. Compute the sum of these prices and add to the low bid for Lot One.

"STEP 3: Compare the total arrived at by Step Two with low bid received for Lot Three. If the bid received for Lot Three is lower, award Lot Three; if higher, award Lots One and Two.

"Repeat Steps One, Two and Three for Lots Four, Five and Six."

Upon the opening of bids on April 15, 1975, the following bids were received for Lots Four through Six:

	Lot 4	Lot 5	Lot 6
Manufacturers Packaging Co.	\$1,477,645.89	\$1,418,120.00	\$2,038,520.00
R & R	\$2,390,279.86	\$1,031,549.00	\$2,002,510.00
Space Age Engineering Inc.	\$1,695,800.00	\$2,998,800.00	\$2,998,800.00

A fourth bid was not considered for reasons not pertinent here. The prices for Lots One through Three (East Coast), upon which R & R did not bid, are not in issue. For purposes of bid evaluation, Manufacturer's low bid on Lot Four had to be increased by the sum total of the prices quoted in the low bid for Lot Five for [identical] items marked "NOT APPLICABLE" in Lot Four. Since R & R's bid on

Lot Five was low, the record indicates that \$1,030,000 (that portion of its bid price for those line items in Lot Five marked "NOT APPLICABLE" in Lot Four) of its total bid of \$1,031,549 was added to Manufacturer's bid (\$1,477,645.89) for Lot Four. Since the total of the above (\$2,507,645.89) exceeded R & R's low bid for Lot Six (\$2,002,510), the solicitation called for award of Lot Six to R & R.

However, during the evaluation period, NRPO decided to cancel the solicitation based on its determination that the evaluation scheme was defective, in that bidders could manipulate their bids so as to virtually preclude the possibility of awards for lots 4 and 5 and ensure award of the combination lot (Lot Six). In support of its position, the activity cites the fact that in applying the evaluation criteria, over 99 percent of R & R's total bid for Lot Five was added to Manufacturer's low bid on Lot Four for evaluation purposes. Furthermore, in its bid on Lot Six, R & R modified its prices quoted for those Lot Five items which were added to the low bid on Lot Four so as to reduce the total bid in Lot Six for those identical items from \$1,030,000 to \$312,200.

Thus, the contracting officer believes that he was prevented from awarding a contract at the lowest reasonable price because the IFB's evaluation criteria permitted bidders to manipulate their bid price as to ensure a single award for each coast. In this regard the contracting officer states in pertinent part:

"For example, on the West Coast, Lot Five contains the majority of the work effort. R & R's low bid of \$1,031,549.00 on Lot Five could not be awarded because of the evaluation criteria. Therefore, the Government would be forced to award a contract on Lot Six for \$2,002,510.00 when \$1,031,549.00 had been bid for the majority of the work. The solicitation, as structured, prevented competition and allowed for manipulation."

Moreover, the procuring activity's supplemental administrative report further indicates that unrealistic Government estimates for the different lots were utilized for purposes of bid evaluation and this fact when taken in conjunction with R & R's unbalanced bid for Lot Five, clearly supports its position that award under the IFB, as structured, would not result in the lowest price to the Government. Specifically, the report reads as follows:

"Historically, more inactive fleet services than active fleet services are required on the West Coast. However, this fact is not reflected in the West Coast estimated quantities nor is the fact that, if the combination lot is to reflect the fleet needs, the estimate should be more than that needed for one of the separate lots. There is no difference between Lot Five and Lot Six except for the Lot designation because the line-items and the estimated quantities are the same. After bid opening, the contracting officer realized that the estimated quantities were defective in that they did not accurately represent fleet needs. Thus, given the Lot Five bid prices; the fact that the majority of the work on the West Coast was in Lot Five; the fact that the estimated quantities for Lot Five and Six were identical; the fact that there were two bids on Lot Five which were substantially lower than R & R's low bid on Lot Six, the contracting officer determined that the Government would be paying substantially more under Lot Six to get services identical to those set forth under Lot Five."

On the basis of the above, the contracting officer determined that the present IFB should be canceled because "it clearly would not result in the lowest price to the Government" and to readvertise the requirements.

R & R argued that there existed no compelling reason under Armed Services Procurement Regulation (ASPR) § 2.404.1 (a) (1975 ed.) to justify cancellation of the IFB and a readvertisement of the activity's requirements. R & R asserts that, since it offered the lowest responsive bid for Lot Six, award should have been made to it. Specifically, the protester supports the reasonableness of its unit prices on the basis that they were substantially lower than those of the previous contractor for the same services that are included in Lot Six of the subject IFB.

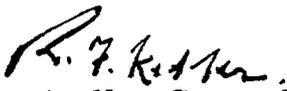
ASPR § 2-404.1 (b) (viii) (1975 ed.) provides that cancellation of an IFB is permitted where, for compelling reasons, it is clearly in the best interests of the Government to do so. We have sustained the cancellation of an invitation where the evaluation basis employed permitted the unbalancing of bids to the extent that award to the low bidder would not result in the lowest ultimate cost to the Government. Low Enterprises, B-182147, December 13, 1974, 74-2 CPD 340; 47 Comp. Gen. 748 (1968); 44 Comp. Gen. 392 (1965).

Therefore, the question for resolution in this case is not whether R & R's bid prices [for Lot Six] were in fact lower than the previous contractor's prices for the same tasks (which fact is disputed by the agency), but whether the bid evaluation method employed in the invitation was such so as to assure that an award to the lowest evaluated bidder would result in the lowest cost to the Government in actual performance.

It is evident that the bid of R & R on Lot Five was unbalanced. Specifically, the record indicates that R & R bid excessively high on those items in Lot Five that were marked "NOT APPLICABLE" in Lot Four, and it bid either nominal prices or "no charge" on the remaining line items. Over 99 percent of R & R's Lot Five bid was for items marked "NOT APPLICABLE" in Lot Four, whereas, the total of the prices quoted for those same items by the other bidders constituted less than 50 percent of their respective bids on Lot Five. It is an inescapable conclusion that R & R unbalanced its bid in favor of those items appearing in Lot Five for which prices were not required in bidding on Lot Four.

Furthermore, the evaluation scheme was defective to the extent that the estimated quantities set forth in the combination lot did not accurately reflect the Navy's requirements for the listed services. For example, while item 0001AA of Lots 4 and 5 are identical and each listed an estimated quantity of 2,000 tons, the combination lot (Lot 6) reflected only the quantity set forth in Lot 5 rather than the total thereof (4,000 tons) necessary for a combined award. This pattern is repeated throughout Lot 6. The failure of the combination lot to reflect the Navy's requirements for a combined award is an inherent weakness in the IFB. Thus, we agree with the procuring activity that the evaluation formula permitted the unbalancing of bids to the detriment of the Government. Accordingly, cancellation of the IFB was proper, and the protest is denied.

Finally, R & R argues that in the event our Office allows the cancellation of the IFB to stand, it should be awarded bid preparation costs. However, since the record indicates that the solicitation was cancelled as a result of unbalanced bidding by R & R under the IFB's defective evaluation scheme rather than because of any arbitrary or capricious action on the agency's part, R & R's request for bid preparation costs must be denied. See T & H Company, 54 Comp. Gen. 102 (1975) 75-1 CPD 345.

  
Deputy Comptroller General  
of the United States